

RAILROAD EQUIPMENT LEASE

THIS LEASE, dated as of the 13TH day of APRIL, 19 89, by and between U. S. RAILCAR, INC. ("Lessor") and SOUTHERN PACIFIC TRANSPORTATION COMPANY ("Lessee").

16884/14
RECORDATION NO. _____ FILED 1425

JUN 4 1990 -11 50 AM

INTERSTATE COMMERCE COMMISSION

W I T N E S S E T H:

1. Lease of Cars. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor NINETY-THREE 100-TON COVERED GONDOLA cars (each hereinafter referred to as a "Car" and more than one hereinafter referred to as "Cars"), bearing numbers as set forth in Exhibit A, attached hereto and made a part hereof.

2. Delivery of Cars. The Cars are presently under lease to lessee pursuant to Assignment Agreement dated 10-14-87 between Pittsburgh and Lake Erie Railroad and Southern Pacific Transportation Company. Effective 1-1-90 this lease will supercede the Assignment Agreement. Prior to 12-31-89 Lessor will use its best efforts to complete any work required by Rule 88 - Mechanical Requirements for Acceptance to AAR on all of the Cars. Lessee will make the Cars available, and will not be obligated for lease payments from the time the Car is delivered to Lessor for such work until such Car is re-delivered to Lessee following completion of such work.

3. Disclaimer of Warranty. LESSEE EXPRESSLY AGREES TO LEASE EACH CAR "AS IS". LESSOR WILL NOT BE DEEMED TO HAVE MADE, AND

LESSOR HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE CARS, THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE CARS, NOR WILL LESSOR BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR CLAIMS OF CUSTOMERS OF LESSEE.

4. Use and Possession. During the term of this lease, so long as Lessee is not in default of the provisions hereunder, Lessee will be entitled to possession of each Car from the date the lease becomes effective as to such Car, and the same may be used on its own property or lines and upon the lines of any other railroad in interchange service; provided, however, that the Cars will be used only in the United States of America, Canada, and the Republic of Mexico for the uses for which they were designed.

5. Term. This lease will be for an initial term which will commence on January 1, 1990 and will terminate on December 31, 1995. If Lessee has fully performed all of its obligations under this lease, Lessee may, by written notice to Lessor given no later than SIXTY (60) days prior to the conclusion of the preceding term, renew this lease for ONE (1) additional term of ONE (1) year. During any additional term all of the provisions and conditions of this lease will continue in effect.

6. Rental. As rental for the use of each Car, Lessee will pay Lessor THREE HUNDRED AND TEN DOLLARS (\$310.00) per month during the initial FIVE (5) year period, and A NEGOTIATED AMOUNT per month for each month of any additional term retained in accordance with the provisions of Paragraph 5 hereof. Lessee will make monthly payments of the aforesaid rental to Lessor within fifteen (15) days from billing date. Billing date will be the first day of the month, commencing with the first day of the month following the commencement date of this lease. Any payment due for a partial month shall be pro-rated. It is specifically agreed that Lessee will retain all Daily Time Charges and Mileage Charges attributable to the use of each Car from the date of delivery until the expiration of the term of this lease.

7. Title. Lessee will not by reason of this lease or any action taken hereunder acquire or have any right or title in and to the Cars except as to the rights herein expressly granted to it as Lessee.

8. Maintenance. During the continuance of this lease, Lessee will promptly and with due diligence keep and maintain the Cars in good working order and repair, and make all replacements and repairs to the Cars or their equipment and appliances to the extent required by presently effective Interchange Rules of the Association of American Railroads and laws and regulations of any Federal, State or governmental body or department. Except as provided in Paragraph 17 hereof with respect to the loss, theft,

or destruction of Cars, all of the foregoing maintenance and replacements will be provided at the sole cost and expense of Lessee and without any reduction or abatement in rent or other loss, cost or expense to Lessor. In addition, Lessor will have the right, but not the obligation, to inspect any Car at its own expense, and upon request of Lessor, Lessee will confirm to Lessor the location of each Car and will, at any reasonable time, make the Car, and Lessee's records pertaining to it available to Lessor for inspection.

9. Additions to Cars. Any parts, replacements or additions made to any Car will be accessions to such Car and title thereto will be immediately vested in Lessor without cost or expense to Lessor. No additions, alterations, removals or basic structural repairs, requiring in excess of twenty (20) man-hours direct labor to complete, will be made to any Car without prior written consent of Lessor.

10. Taxes. Lessee will promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes, levied or assessed during the continuance of this lease upon the Cars or the interest of Lessee therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against Lessor on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of Lessor therefrom, Lessee will promptly pay or reimburse Lessor for the same except

that Lessee will not be required to pay the same so long as it protests, in good faith and by appropriate legal or administrative proceedings, the validity or amount of such levy or assessment.

11. Laws and Regulations. During the term of this lease, Lessee will comply with all statutes, orders, regulations, and ordinances applicable to its business and the use of the Cars, and Lessee agrees that its use of the Cars will not violate any statutes, laws, ordinances or regulations of any governmental agency applicable to the use of such Cars.

12. Freight and Other Charges. Lessor will not be obligated for the payment of any freight or other charges incurred by the movement or the holding of the Cars, either loaded or empty, during the term of this lease.

13. Lading. Lessor will not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, for whatever reason such loss or damage may be caused or result. Lessee agrees to assume responsibility for, to indemnify Lessor against, and save Lessor harmless from any such loss or damage or claim therefor.

14. Prohibition Against Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any liens, security interests or other encumbrances on or with respect to the Cars, Lessor's title thereto or any interest of Lessor

therein, and Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such lien, security interest or other encumbrance. Lessee will not be required, however, to pay or discharge any such lien or claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title in and to the Cars or Lessor's interest therein.

15. Identification of Cars. At all times during the continuance of this lease, Lessee will cause each Car to bear the number assigned to it and appearing thereon as of the date of its delivery.

16. Indemnity. Lessee hereby agrees to forever indemnify, defend and save Lessor harmless from and against any and all damages, claims, actions, liabilities, costs and expenses, including attorneys' fees arising directly or indirectly out of or in connection with the condition, operation or use of all or any of the Cars from and after their delivery to Lessee until their redelivery to Lessor. If Lessor is named as a party to any lawsuit as a result of the above, Lessee agrees to undertake the defense and costs associated therewith immediately upon tender of said defense, including payment of any judgement directed against Lessor, jointly or severally. Lessee also agrees to pay and indemnify Lessor from any and all penalties, taxes, fines, and levies arising from the operations of said Cars under this lease.

17. Loss, Theft or Destruction of Cars. In the event that any Car shall be lost, stolen, destroyed or irreparably damaged beyond economic repair (to be determined by Lessor) from any cause whatsoever at any time during the term of this lease, Lessee will be relieved of its obligation to pay rentals in respect of such Car from the date of such occurrence. Lessee will forthwith advise Lessor of such occurrences and will make prompt settlement for each such Car by payment in cash to Lessor of a sum calculated, as of the date of said loss, theft, destruction or damage, in accordance with the prevailing rules applicable thereto in the Field Manual of Interchange Rules prescribed by the Association of American Railroads, plus any unpaid rental and charges as herein provided to such date. Such settlement will be made no later than forty-five (45) days after the occurrence. Upon payment of such settlement, this lease will terminate as to such Car as of said date and Lessee will be entitled to salvage, if any.

18. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to Paragraph 17 hereof), Lessee will at its sole cost and expense immediately surrender possession of such Car by causing delivery of same to be made at the direction of Lessor, to a location or points on the system lines of Lessee. If on termination, Lessor fails to provide disposition instructions Lessee will store Cars free of charge for up to ninety (90) days. Lessee will return all Cars to Lessor in good condition suitable for interchange under accepted

interchange practices as covered in the current AAR Field Manual of Interchange Rules, and in furtherance of this obligation, Lessee and Lessor will perform a joint inspection of all Cars prior to redelivery, each party to assume the expense of its own inspection. Until such time as each Car has been redelivered to Lessor, Lessee will continue to pay rental at the rate being paid immediately prior to termination of this lease and Lessee will make all other payments and perform all obligations and requirements of Lessee under all provisions of this lease as though such termination had not occurred.

19. Substitution of Cars. In the event the lease as to any Car shall be terminated pursuant to Paragraph 8 or 17 hereof, Lessor will have the right, but not the obligation, to substitute therefor another Car of the same type and capacity, subject to inspection by Lessee. Lessor may offer replacement cars of a different grade at a lease rate to be negotiated.

20. Default. The term "event of default" for the purpose hereof will mean any one or more of the following:

(a) Non-payment by Lessee within five (5) days after written notice to Lessee of default in payment of rental or any other sum required to be paid hereunder by Lessee;

(b) Failure by Lessee, in the observance or performance of any agreement required to be observed or

performed on its part under this lease, except as referred to in the foregoing clause (a), said failure continuing for a period of thirty (30) days after the giving of written notice thereof by Lessor;

(c) Decree or order, entered by a court having jurisdiction in the premises, adjudging Lessee bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under Federal or State law; or

(d) Institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceeding or to any action taken or proposed to be taken in any proceeding described hereinabove in clause (c), or the making by Lessee of a general assignment for the benefit of creditors.

21. Remedies. Lessor will have the right in the event of default by Lessee to terminate this lease immediately by giving notice to Lessee, and Lessor may, without any notice or demand, take or cause to be taken immediate possession of the Cars, pursuant to Paragraph 18 hereof concerning redelivery of Cars by Lessee, provided, however, that all remedies are cumulative and such retaking will not be deemed as exclusive or a waiver of Lessor's right to receive payment of all sums, including reasonable attorney's fees and costs, payable by Lessee to Lessor

under this lease, or any other rights or remedies conferred upon Lessor under applicable laws or in equity.

22. Net Lease. The lease provided for herein is a net lease, and Lessee acknowledges and agrees that Lessee's obligation to pay all rentals hereunder, shall be absolute and unconditional and shall not be subject to any abatement, reduction, setoff, defense, counterclaim or recoupment for any reason whatsoever, including, without limitation, such as may be due to any present or future claims of Lessee against Lessor under this lease or otherwise. Except as otherwise expressly provided herein, this lease shall not terminate, nor shall the obligations of Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, any Cars from whatsoever cause (other than provided for in Paragraph 17 hereof), or the interference with the use thereof by any third party or governmental authority, or the invalidity or unenforceability or lack of due authorization of this lease or lack of right, power or authority of Lessor or Lessee to enter into this lease or any failure of Lessor to perform any obligation of Lessor to Lessee under this lease, or any instrument or document executed in connection herewith, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of Lessor and Lessee that all rentals payable by lessee hereunder shall be, and continue to be, payable in all events unless the

obligation to pay the same will be terminated pursuant to the express provisions of this lease.

23. Recording. Lessee, immediately upon execution and without expense to Lessor, will cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 11303(a) of the Interstate Commerce Act.

24. Sublease and Assignment. Lessee will not assign or sublease this lease or any of the Cars without the prior written consent of Lessor, which will not be unreasonably withheld. However, any event of default under such assignment or sublease will be considered as an event of default under this lease. Lessor may sell or otherwise dispose of the Cars or may assign and reassign all or part of its rights under this lease, including the rent to be paid, without the consent of Lessee, if said sale, disposition, assignment or reassignment does not diminish, interfere or prejudice the rights of Lessee under this lease, and Lessor gives to Lessee notice of any such sale, disposition, assignment or reassignment.

25. Successors and Assigns. The covenants, conditions and agreements contained in this lease will bind and inure to the benefit of the parties, their successors and permitted assigns.

26. Governing Laws - Amendments. The terms of this lease and all rights and obligations hereunder will be governed by the laws of the State of Illinois. The terms of this lease and the rights

and obligations of the parties hereto may not be amended or terminated orally, but only by agreement in writing by the party against whom the enforcement of such amendment or termination is sought.

27. Execution. This lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which will be sufficiently evidenced by any such original counterpart.

WITNESS:

U. S. RAILCAR, INC.

Walter L. Kerner

BY

Homer D. Jones

WITNESS:

E. J. Morrissey

BY

Walter L. Kerner

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44001	44323	44384
44002	44325	44385
44003	44326	44386
44004	44327	44387
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44010	44335	44394
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44020	44344	44402
44021	44348	44409
44022	44351	44418
44035	44352	44419
44300	44353	44422
44301	44354	44423
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STATE OF Illinois

COUNTY OF Lake

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) SS:
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On this 20th day of JULY, 19 , before,
me the undersigned Notary Public, personally appeared
Homer G. Jones, who being duly sworn according to
law, acknowledged that he is President of
U. S. Railcar, Inc.
that he executed the foregoing instrument for and on behalf of said
company, and that the execution of the foregoing instrument was the
free act and deed of said company.

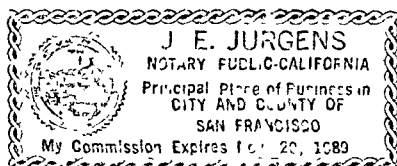
Kathleen M. Harwick
Notary Public

MY COMMISSION EXPIRES
SEPTEMBER 24, 1989
KATHLEEN M. HARWICK

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN FRANCISCO)

On this 27TH day of ~~April~~ ^{SEPTEMBER}, 1989, before me, the subscriber, J E JURGENS, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named E. J. MORRISSEY to me personally known, who stated and acknowledged that he is an Assistant Vice President-Fleet Management of Southern Pacific Transportation Company, a(n) DELAWARE corporation, authorized by authority of the Board of Directors or the By-Laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he has so signed, executed and delivered the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he has so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 27TH day of ~~April~~ ^{SEPTEMBER}, 1989.



[Signature]
Notary Public

My commission expires 11-20-89.